

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN OTSUKA, an individual and on behalf
of all others similarly situated; JANIS
KEEFE, an individual; CORINNE PHIPPS,
and individual; JUSTIN KISER, an
individual; and RENEE DAVIS,

Plaintiffs,
v.

POLO RALPH LAUREN CORPORATION;
POLO RETAIL, LLC; POLO RALPH
LAUREN CORPORATION, DOING
BUSINESS IN CALIFORNIA AS POLO
RETAIL CORPORATION; AND
FASHIONS OUTLET OF AMERICA, INC.,

Defendants.

Case No. C07-02780 SI

**JOINT SET OF AGREED JURY
INSTRUCTIONS**

Dept.: Courtroom 10, 19th Floor
Judge: Hon. Susan Illston

Trial Date: March 8, 2010

1.1C DUTY OF JURY

Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you as to the law of the case.

A copy of these instructions will be sent with you to the jury room when you deliberate.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.1C

UNITED STATES DISTRICT JUDGE

GIVEN: _____

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WITHDRAWN: _____

INSTRUCTIONS TO THE JURY

Members of the Jury:

You are now the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. The evidence will consist of the testimony of witnesses, documents, and other things received into evidence as exhibits and any facts on which the lawyers agree or which I may instruct you to accept. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to take anything I may say or do during the trial as indicating what I think the evidence or what your verdict should be.

Authority: 3 Hon. Edward J. Devitt et al., Federal Jury Practice and Instructions, Civil § 71.01 (4th ed. 1987) (“Devitt”)

UNITED STATES DISTRICT JUDGE

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DUTY TO FOLLOW INSTRUCTIONS

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between the persons of equal standing in the community, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as is a private individual. All persons, including corporations, partnerships, unincorporated associations, and other organizations, stand equal before the law, and are to be dealt with as equals in a court of justice.

Authority: Devitt § 71.01

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

VERDICT FORMS

Upon retiring to the jury room you should first select one of your number to act as your foreman or forewoman who will preside over your deliberations and will be your spokesperson here in court. A form of verdict has been prepared for your convenience. **(explanation of verdict form)**

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing signed by the foreman or forewoman, and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

Authority: Ninth Circuit Manual of Model Jury Instructions; Devitt §§ 74.04, 74.08.

 UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

1.10 RULING ON OBJECTIONS

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.10

UNITED STATES DISTRICT JUDGE

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OUTLINE OF THE TRIAL

The trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiffs will then present evidence, and counsel for the defendants may cross-examine. After the evidence has been presented, the attorneys will make closing arguments, and I will instruct you on the law that applies to the case.

After that, you will go to the jury room to deliberate on your verdict.

Authority: Ninth Circuit Manual of Model Jury Instructions

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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1.6 WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.6

UNITED STATES DISTRICT JUDGE

GIVEN: _____

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1.7 WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, [will say in their] closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits are received only for a limited purpose; when I [give] [have given] a limiting instruction, you must follow it.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.7

 UNITED STATES DISTRICT JUDGE

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1.8 EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

[The testimony [you are about to hear] [you have just heard] may be considered only for the limited purpose of [describe purpose] and for no other purpose.]

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.8

UNITED STATES DISTRICT JUDGE

GIVEN: _____

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1.9 DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.9

UNITED STATES DISTRICT JUDGE

GIVEN: _____

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1.11 CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.11

UNITED STATES DISTRICT JUDGE

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1.12 CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via e-mail, text messaging, or any Internet chat room, blog, Web site or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

1 The law requires these restrictions to ensure the parties have a fair trial based on the same
2 evidence that each party has had an opportunity to address. A juror who violates these restrictions
3 jeopardizes the fairness of these proceedings[, and a mistrial could result that would require the entire
4 trial process to start over]. If any juror is exposed to any outside information, please notify the court
5 immediately.

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7 Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.12
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UNITED STATES DISTRICT JUDGE

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1.13 NO TRANSCRIPT AVAILABLE TO JURY

During deliberations, you will have to make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

If at any time you cannot hear or see the testimony, evidence, questions or arguments, let me know so that I can correct the problem.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.13

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

1.14 TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you. When you leave, your notes should be left in the [courtroom] [jury room] [envelope in the jury room]. No one will read your notes. They will be destroyed at the conclusion of the case.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.14

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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1.18 BENCH CONFERENCES AND RECESSES

From time to time during the trial, it [may become] [became] necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury [is] [was] present in the courtroom, or by calling a recess. Please understand that while you [are] [were] waiting, we [are] [were] working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we [will do] [have done] what we [can] [could] to keep the number and length of these conferences to a minimum. I [may] [did] not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.18

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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1.19 OUTLINE OF TRIAL

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 1.19

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

2.2 STIPULATIONS OF FACT

The parties have agreed to certain facts [to be placed in evidence as Exhibit ____] [that will be read to you]. You should therefore treat these facts as having been proved.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.2

UNITED STATES DISTRICT JUDGE

GIVEN: _____

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2.3 JUDICIAL NOTICE

The court has decided to accept as proved the fact that [state fact], even though no evidence has been introduced on the subject. You must accept this fact as true.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.3

UNITED STATES DISTRICT JUDGE

GIVEN: _____

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2.4 DEPOSITION IN LIEU OF LIVE TESTIMONY

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. [When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.]

The deposition of [witness] was taken on [date]. You should consider deposition testimony, presented to you in court in lieu of live testimony, insofar as possible, in the same way as if the witness had been present to testify.

[Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.]

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.4

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

MODIFIED: _____

WITHDRAWN: _____

2.8 IMPEACHMENT EVIDENCE—WITNESS

The evidence that a witness [e.g., has been convicted of a crime, lied under oath on a prior occasion, etc.] may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness and for no other purpose.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.8

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

2.10 USE OF INTERROGATORIES OF A PARTY

Evidence [will now be] [was] presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers [have been] [were] given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.10

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

2.11 EXPERT OPINION

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.11

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

2.12 CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries not received in evidence [may be] [have been] shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.12

UNITED STATES DISTRICT JUDGE

GIVEN: _____

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WITHDRAWN: _____

2.13 CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries [may be] [have been] received into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.13

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____

2.14 EVIDENCE IN ELECTRONIC FORMAT

Those exhibits capable of being displayed electronically will be provided to you in that form, and you will be able to view them in the jury room. A computer, projector, printer and accessory equipment will be available to you in the jury room.

A court technician will show you how to operate the computer and other equipment; how to locate and view the exhibits on the computer; and how to print the exhibits. You will also be provided with a paper list of all exhibits received in evidence. (Alternatively, you may request a paper copy of an exhibit received in evidence by sending a note through the [clerk] [bailiff].) If you need additional equipment or supplies, you may make a request by sending a note.

In the event of any technical problem, or if you have questions about how to operate the computer or other equipment, you may send a note to the [clerk] [bailiff], signed by your foreperson or by one or more members of the jury. Be as brief as possible in describing the problem and do not refer to or discuss any exhibit you were attempting to view.

If a technical problem or question requires hands-on maintenance or instruction, a court technician may enter the jury room [with [the clerk] [the bailiff] [me] present for the sole purpose of assuring that the only matter that is discussed is the technical problem.] When the court technician or any non-juror is in the jury room, the jury shall not deliberate. No juror may say anything to the court technician or any non-juror other than to describe the technical problem or to seek information about operation of equipment. Do not discuss any exhibit or any aspect of the case.

1 The sole purpose of providing the computer in the jury room is to enable jurors to view the
2 exhibits received in evidence in this case. You may not use the computer for any other purpose. At
3 my direction, technicians have taken steps to make sure that the computer does not permit access to
4 the Internet or to any “outside” website, database, directory, game, or other material. Do not attempt
5 to alter the computer to obtain access to such materials. If you discover that the computer provides or
6 allows access to such materials, you must inform me immediately and refrain from viewing such
7 materials. Do not remove the computer or any electronic data [disk] from the jury room, and do not
8 copy any such data.

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10 Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 2.14
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UNITED STATES DISTRICT JUDGE

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3.1 DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 3.1

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

MODIFIED: _____

WITHDRAWN: _____

3.2 COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the [marshal] [bailiff], signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone-including me-how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 3.2

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

MODIFIED: _____

WITHDRAWN: _____

3.3 RETURN OF VERDICT

A verdict form has been prepared for you. [Any explanation of the verdict form may be given at this time.] After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.

Authority: Ninth Circuit Manual of Model Jury Instructions, Civil, Instruction 3.3

UNITED STATES DISTRICT JUDGE

GIVEN: _____

REVISED: _____

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WITHDRAWN: _____